



OFFICE OF  
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

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MEMORANDUM FOR PARIS A. DOMINIC  
DEPUTY ASSOCIATE CHIEF COUNSEL (PROCEDURES AND  
ADMINISTRATION)

FROM: Dennis M. Ferrara *Dennis M. Ferrara*  
Deputy Associate Chief Counsel (General Legal Services)

SUBJECT: Review of Proposed P-5-133 Policy Changes

This responds to your request that we review the Service's proposed changes to Policy Statement P-5-133 and revised procedures to implement the changes. We reviewed the changes from the perspective of whether they violated Section 1204 of the 1998 Restructuring and Reform Act or 26 C.F.R. Part 801. Section 1204 prohibits the Service from using records of tax enforcement results to evaluate employees or to impose or suggest production quotas or goals on employees. 26 C.F.R. Part 801 established the Service's balanced measurement systems and set limits on the types of measures which could be used to evaluate organizations and employees.

We do not believe that the Service's proposed changes to Policy Statement P-5-133 or the revised procedures violate either Section 1204 or 26 C.F.R. Part 801. While employees are expected to use tax enforcement results<sup>1</sup> when determining whether to secure an unfiled tax return—i.e., employees are required to examine the anticipated revenue in relation to the time and effort required to secure a return or determine tax due—the policy change does not suggest employees are going to be evaluated on the number of returns they secure or on the amount of revenue generated by the returns they secure. It does not violate Section 1204 or 26 C.F.R. Part 801 for employees to

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<sup>1</sup> A "tax enforcement result" is defined as "the outcome produced by an Internal Revenue Service employee's exercise of judgment recommending or determining whether or how the Internal Revenue Service should pursue enforcement of the tax laws." 26 C.F.R. § 801.6(d)(1). "Records of tax enforcement results" is defined as the "data, statistics, compilations of information or other numerical or quantitative recordings of the tax enforcement results reached in one or more cases, but do not include tax enforcement results of individual cases when used to determine whether an employee exercised appropriate judgment in pursuing enforcement of the tax laws based upon a review of the employee's work on that individual case." 26 C.F.R. § 801.6(d)(2).

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use tax enforcement results to engage in a form of resource allocation analysis when determining whether or how to secure a delinquent tax return. Moreover, it does not violate Section 1204 or 26 C.F.R. Part 801 for a manager to evaluate an employee based on whether that employee appropriately executed that analysis in an individual case.

If we can be of any further assistance in this matter, you may contact Mike Gallagher or Julie Barry at 283-7900.